IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.119 OF 2004

1. Shri Krishna Sakhoba Patil
deceased through his legal heirs
Smt.Ambubai Krishna Patil & Ors. .. Appellants

Versus

Shri Appa Babu Gorule & Ors. .. Respondents

Mr.A. S. Desai, advocate for appellants.

CORAM : P.V.KAKADE, J.

DATE : 6TH JUNE, 2005.

P.C.:

1. This is an appeal preferred by the present appellants against the judgment and order passed by the Additional District Judge, Gadhinglaj dated 16th December, 2003 dismissing the appeal and confirming the judgment and order passed by the Trial Court dismissing

the suit of the appellants-plaintiffs for specific performance of the contract.

2. Heard the learned counsel for the appellants. Perused the record.

3. Both the courts below were of the view that the plaintiffs failed to prove their readiness and willingness to perform their part of the contract and as such they were not entitled to specific performance of the contract between the parties. The facts also show that the suit agreement dated 20.2.1974 executed between the parties was for Rs.1700/-, out of which Rs.1400/= were paid as an earnest money. It was not proved by the plaintiffs that they were in possession of the suit property as alleged. The property in the meantime was sold to other parties in the year 1996 and the suit for specific performance of the contract of the year 1974 was filed in the year 1997.

4. Perusal of the entire record shows that there is no substantial question of law involved in this appeal and both the courts below have come to the conclusion that since the plaintiffs kept silent for the period

more than 23 years, they were held to be not ready and willing to perform their part of the contract. The learned counsel for the appellants submitted that as per the contract the defendants were required to fulfil certain conditions, however, there is no evidence on record to show that the appellants-plaintiffs called upon the other side to fulfil that conditions, instead kept silent for about 23 years and when the property was finally sold in the year 1996 to some other party, they filed the present suit. In the light of this scenario both the courts below have held against the plaintiffs and in my considered view, the discretion used by both the courts below in denying the specific performance would brook no interference as it does not involve any substantial question of law.

5. In the result the appeal stands dismissed.

. Consequently the Civil Application also stands dismissed.

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